

REMARKS

Summary of the Examiner's Actions

The examiner approved the drawings filed in response to the Office Action of February 25, 2004. Applicant appreciates the approval by the examiner.

The examiner maintained the rejection of Claims 1-25 under 35 U.S.C. § 103(a) as being obvious under Cannaday, U.S. Patent 4,989,546 ("Cannaday"), in view of Kemper, et al., U.S. Patent 5,216,850 ("Kemper"). Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

Rejections under 35 U.S.C. § 103(a)

The examiner rejected claims 1-25 as being obvious under Cannaday in view of Kemper. In order to support a rejection under 35 U.S.C. § 103(a), "the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP § 2142, pg. 2100-121, 8th ed. "To reach a proper determination under 35 U.S.C. § 103(a), the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made." *Id.* The first element in establishing a *prima facie* case of obviousness is that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings." MPEP § 2143, pg. 2100-122, 8th ed. The second element is that there "must be a reasonable expectation of success." *Id.* The third element is that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." *Id.*

The examiner has not established a *prima facie* case of obviousness based on the combination of the Cannaday and Kemper references or on any other evidence of record.

Filed herewith is the Declaration of Thomas P. Bjorholm Under 37 C.F.R. § 1.132. Thomas P. Bjorholm is considered to be one of at least ordinary skill in the art in the field of pet doors. The facts set forth in Thomas P. Bjorholm's declaration establish the following:

1. There was no motivation or suggestion in the art, as of the date of Application Serial Number 10/643,814, that would have prompted one skilled in the art to make the examiner's proposed combination; and

2. That the examiner's proposed combination fails to teach or suggest all of the claimed limitations, arranged as claimed.

As Applicant believes Claims 1-25 to be allowable over the cited prior art, in view of the facts presented by Thomas P. Bjorholm, Applicant respectfully requests that the examiner withdraw the rejections of Claims 1-25 and under 35 U.S.C. § 103(a).

Amendments to the Specification

The specification has been amended to correct a typographical omission.

Summary

In view of the amendment of the specification, the Declaration of Thomas P. Bjorholm under 37 C.F.R. § 1.132 and the arguments presented herein, it is believed that the above-identified patent application is in a condition for the issuance of a Notice of Allowance. Such action by the examiner is respectfully requested. If, however, the examiner is of the opinion that any of the drawings or other portions of the application are still not allowable, it will be appreciated if the examiner will telephone the undersigned to expedite the prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ken Hoffmeister". The signature is fluid and cursive, with the first name "Ken" being more prominent than the last name "Hoffmeister".

J. Kenneth Hoffmeister

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